IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No. 12236 of 2000

For Approval and Signature:

HONOURABLE MR.JUSTICE KS JHAVERI

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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AHMEDABAD MUNICIPAL CORPORATION - Petitioner(s)

Versus

PANDURANG ANANTRAI BAGATE - Respondent(s)

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Appearance :

MR RM CHHAYA for Petitioner No(s).: 1.

RULE SERVED for Respondent No(s).: 1.

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CORAM : HONOURABLE MR.JUSTICE KS JHAVERI

Date : 09/08/2005

ORAL JUDGMENT

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1. This petition is directed against the judgment and award dated 17th December, 1999 passed by the Labour Court, in Reference [I.C.A.] No. 1065/86, whereby the Labour Court has directed the petitioner to reinstate the respondent on his original post with continuity in service along with 50% back wages and further a penalty

of stoppage of three increment with permanent effect.

2. The short facts of the case are that the respondent was working as a Section Officer in the Public Health Engineering Department of the petitioner Corporation. The respondent was charge sheeted and thereafter departmental inquiry was initiated against on the ground of financial irregularities. Since the charges levelled against the respondent were proved, he was dismissed from the service w.e.f. 16th January, 1979.

2.1. Feeling aggrieved by the said order, the respondent raised an industrial dispute which was ultimately referred to the Labour Court, for adjudication. The Labour Court after appreciating the materials produced before it, passed the impugned award. Hence, this petition.

3. I have heard learned counsel for the petitioner and perused the documents placed on record. Though served none appeared on behalf of the respondent. Having gone through the award, it appears that the Labour Court has committed an error while exercising powers under Section 11A of the Industrial Disputes Act, 1947. Looking to the

seriousness of the charges levelled against the respondent, the Labour Court ought not to have granted reinstatement with continuity of service to the respondent. Moreover, considering the fact that the respondent has carried out the work which was not assigned to him thereby causing loss to the public exchequer, in the interest of justice, it would be appropriate to treat the date of dismissal from the service as the date on which the respondent has voluntarily retired from the service.

4. In above view of the matter, it is observed that the respondent shall be treated to have voluntarily retired from the service on 16.01.1979 i.e the date on which he was dismissed from the service. The petitioner is directed to give all the retired benefits to the respondent as if he has voluntarily resigned from the service on 16.01.1979 within a period of three months from the receipt of writ of this order. The petition stands disposed of accordingly. Rule is made absolute to the aforesaid extent with no order as to costs.

[K.S. JHAVERI, J.]

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